

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
SAN JUAN COUNTY TO B. MICHAEL
WAREHAM

WILLIAM BRYANT,

Appellant,

v.

SAN JUAN COUNTY AND B. MICHAEL
WAREHAM,

Respondents.

SHB No. 79-32

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit issued by San Juan County to B. Michael Wareham was brought before the Shorelines Hearings Board, Chris Smith, Rodney Kerslake, William A. Johnson, and Delmon Anderson, convened at West Sound on October 17, 1979. Hearing examiner William A. Harrison presided.

Appellant, William Bryant, appeared by his attorney, Donald J. Vaux. Respondent, San Juan County, was represented by Eugene H. Knapp,

Prosecuting Attorney. Respondent, B. Michael Wareham, was represented
his attorney, James E. Anderson.

Having heard the testimony, having examined the exhibits, having
viewed the site of the proposed development, and being fully advised, the
Shorelines Hearings Board makes the following

FINDINGS OF FACT

I

This matter takes place in the vicinity of West Sound, Orcas Island,
San Juan County. Respondent, B. Michael Wareham owns West Sound Marina
("Marina"), a facility offering boat repair and moorage for some 115
pleasure craft. Appellant, William Bryant owns Picnic Island which is
offshore from the Marina. Between Picnic Island and the Marina lies
Government Island which is federally owned.

The most severe winds are from the southeast, and old piling,
sometimes fortified with floating logs, now protect the southern flank of
the Marina. Desiring to improve the Marina's protection, respondent
Wareham filed with San Juan County, on February 5, 1979, an application
for a substantial development permit under the Shoreline Management Act of
1971, (SMA) chapter 90.58 RCW. The proposed development includes removing
the old piling and installing a floating breakwater some 250 feet in
length along the southern edge of the Marina. Wareham had been previously
advised by the Coast Guard that construction of a breakwater would
constitute expansion of the Marina, thereby necessitating simultaneous
construction of a pump-out station for pleasure craft sewage holding
tanks. Consequently the proposed development includes such a pump-out
station consisting of a hose and 1/2 horsepower pump motor on the

1 breakwater leading to an existing sewer system on shore. A public
2 restroom would also be constructed on shore. Lastly, the proposed
3 development includes relocation of existing fuel hoses onto the
4 breakwater. Fuel holding tanks are presently located on shore and will
5 remain there.

6 Respondent Wareham's primary concern is for construction of the
7 breakwater, and location of the pump out and fueling hoses there is for
8 the incidental purpose of segregating those operations from the permanent
9 moorage slips.

10 II

11 The distance from the existing southernmost pier at the Marina to
12 Government Island, at mean low tide, is 170 feet. This passageway
13 averages 6-9 feet of water depth, minimum three feet, also at mean low
14 tide.

15 Construction of the proposed breakwater would reduce the width of the
16 passageway by 50 feet, to 120 feet. Such construction would not
17 materially change either the average or minimum water depth of the
18 passageway.

19 Although reduced in width, the passageway would continue to
20 accommodate appellant's outboard boat and supply barge providing a
21 protected route in bad weather at most tides. Appellant has not shown
22 that any boat now able to negotiate the passageway would be barred or
23 impeded by construction of the proposed development.

24 Construction would result in no significant disturbance to marine
25 biota, and would involve no increased danger of pollution from fuel

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1 spillage. The Marina is and will be equipped with sorbent pads to com
2 minor spills. The proposed development should substantially reduce
3 pollution from sewage by providing pleasure craft with a pump out station,
4 possibly the first in San Juan County, as an alternative to direct
5 discharge into the water.

6 III

7 Following receipt of respondent Wareham's substantial development
8 permit application by San Juan County on February 5, 1979, the following
9 events occurred, inter alia:

10 a) February 5, 1979: Wareham filed with San Juan County a completed
11 "Environmental Checklist" as called for by the rules implementing the
12 State Environmental Policy Act (SEPA) chapter 43.21C RCW. WAC 197-10-310

13 b) February, 1979: Notice of the application was duly published and
14 posted by San Juan County.

15 c) March 21, 1979: Appellant Bryant, filed with San Juan County the
16 first of three letters opposing the application.

17 d) March 27, 1979: San Juan County circulated the application to:

- 18 1) County Sanitarian
- 19 2) University of Washington, Friday Harbor Laboratory
- 20 3) Department of Ecology
- 21 4) Department of Natural Resources
- 22 5) Army Corps of Engineers

23 requesting review and response by May 12, 1979. No opposition to the
24 application was received in reply.

25 e) March 28, 1979: San Juan County Planning Department issued a
26 Proposed Negative Threshold Determination under SEPA. See WAC
27 197-10-340(3). This Determination was circulated to:

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- 1) Department of Ecology
- 2) Department of Natural Resources
- 3) University of Washington, Friday Harbor Laboratory

and no opposition was received in reply. Notice of this Determination was set forth in a letter of this date to appellant Bryant together with notice of a public hearing before the San Juan County Board of County Commissioners to be held April 17, 1979, in the County Courthouse at 1:30 p.m.

f) April 17, 1979: Through inadvertence the application was placed on the County Commissioners' agenda for 11:00 a.m. At that time the Planning Department recommended issuance of the permit. Counsel for appellant then arrived and pointed out disparity between the times stated in notice and agenda. The County Commissioners refrained from taking any action and announced that the public hearing would be rescheduled.

g) May 14, 1979: A dispute between the County and appellant over the proper site for the rescheduled public hearing was resolved in appellant's favor by Order of the Superior Court for San Juan County. The public hearing was duly set and noticed for June 19, 1979, on Orcas rather than San Juan Island.

h) June 19, 1979: A public hearing was held before the County Commissioners wherein appellant's counsel argued against the application; respondent Wareham argued in favor of it; other persons were heard; and, the San Juan County Planning Department recommended approval.

The County Commissioners issued a shoreline substantial development permit to:

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1 "expand existing marina with the installation
2 of floating breakwater, pump out facility and
3 fuel dock and 10 additional moorage slips."
4 (Emphasis added)

5 IV

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 Appellant urges that San Juan County acted improperly in failing to
12 require an Environmental Impact Statement prior to acting on respondent
13 Wareham's application. We disagree. After full consideration of the
14 County's negative threshold determination in light of the evidence before
15 us we cannot conclude that it was clearly erroneous in view of the pub
16 policy contained in SEPA, Norway Hill Preserv. & Protec. Ass'n. v. King
17 County Coun., 87 Wn.2d 267, 552 P.2d 674 (1976).

18 II

19 Appellant contends that San Juan County failed to notify him of the
20 application in question. This contention is mooted by our finding that
21 appellant was aware of the application no later than March 21, 1979, the
22 date on which San Juan County received his first letter of opposition.
23 This was sufficiently in advance of the County's hearing and action on the
24 matter to allow appellant the full opportunity to express his views oral
25 and in writing as in fact he did.

26 Appellant next challenges the change in time of the first public
27 hearing before the County Commissioners. This, we have found, was the

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1 result of inadvertence, resulted in postponement of any action until a
2 substitute hearing was convened and did not deprive the appellant of an
3 opportunity to be heard. No disinterested person could justifiably think
4 that the abortive first hearing injected partially into the final action
5 of the County Commissioners. See Swift v. Island County, 87 Wn.2d 348,
6 552 P.2d 175 (1976). That episode caused no breach of the appearance of
7 fairness doctrine.

8 We have reviewed the remaining contentions of appellant relating to
9 procedures preceeding final action by the County Commissioners and find
10 such contentions to be without merit.

11 III

12 Appellant raises an issue as to the shoreline environment(s), created
13 by the San Juan County Shoreline Master Program, Exhibit W-6, (Master
14 Program) within which the proposed development would be built. Orcas
15 Island in the vicinity of the Marina and upland of the line of ordinary
16 high tide, is designated "suburban". Government Island, by virtue of its
17 public ownership, is designated "natural" upland of the line of ordinary
18 high tide. The area seaward of these lines of ordinary high tide is
19 designated "aquatic". Master Program, Section 1.03 and San Juan County
20 Designated Shoreline Environment Map with "Notes" stated thereon.

21 As indicated on the substantial development permit, the proposed
22 development fits within the definition of breakwaters, Section 5.05;
23 commercial development, Section 5.08; docks and piers, Section 5.08 and
24 marinas, Section 5.13 of the Master Program. The proposed development
25 would be built within the aquatic environment. Each of the types of
26 development just cited are allowed in an aquatic environment by language
27 typified by Section 5.05, p. 26 of the Master Program relating to

breakwaters:

Breakwaters shall be permitted in the aquatic Environment subject to the policies and regulations contained in this Master Program and to the regulations by environment applicable to the abutting shoreline area. Where the proposed breakwater site abuts more than one shoreline environment the policies and regulations of the most restrictive abutting environment shall govern, provided that the Administrator may exercise the discretion authorized under "Aquatic" in Section 5.03, page 23.

This latter citation states:

. . . provided that the Administrator may substitute the policies and regulations of a less restrictive abutting environment if in his/her opinion the public interest would not be compromised by doing so.

In ruling upon the applicable shoreline environment we will carefully consider the above proviso. Under the Master Program, the proposed development would be prohibited if governed by the "natural" environment but not prohibited if governed by the "suburban" environment. Section 5.05, p. 26; 5.07, pp. 30-31; 5.08, pp. 33-34; 5.13, pp. 44-45. The substantial development permit issued by the County Commissioners sets forth that the applicable shoreline environment designation is "suburban" (paragraph 4). We conclude that the public interest is not compromised by applying the suburban environment designation to the proposed development now before us. In assessing the public interest we turn to the keynote policies of the Shorelines Management Act (SMA):

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited

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reduction of rights in the navigable waters, will
promote and enhance the public interest.
RCW 90.58.020. (Emphasis added)

In this case the proposed development, a breakwater, is water dependent. It protects and serves a marina which is a shoreline recreational use facilitating public access to shorelines and a use given priority by the SMA. RCW 90.58.020. It is to be a floating breakwater which because of its lesser impact on the circulation of water is given preference by the Master Program. Section 5.05, p. 25, Policy 2. The fuel hoses pose minimal danger of pollution and the proposed pump out station would prevent damage to the natural environment, another important goal set forth by the SMA. RCW 90.58.020. These factors outweigh the limited reduction of navigation involved in this instance and support our conclusion that the public interest is not compromised by applying the suburban environmental designation.

IV

The proposed development must meet the policies and regulations for breakwaters contained in the Master Program in order to be permitted in the suburban environment. Section 5.05, p. 26 - Suburban. Policy No. 4 for breakwaters states:

Restrictions on the public use of the water surface resulting from the construction of breakwaters should be minimized.

Regulation No. 2 for breakwaters states:

. . . The design shall also be such that impediments to navigation . . . shall be minimized.

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1 In order to meet this Policy and Regulation, the respondent's substantial
2 development permit must be conditioned to prevent moorage of boats on the
3 outside (southern side) of the breakwater in the passage between the
4 proposed breakwater and Government Island. The following conditions
5 effect this result:

- 6 1. The 10 additional moorage slips shall be
7 confined to the inside (northern side) of the
8 breakwater.
- 9 2. Moorage shall be prohibited on the end of the
10 breakwater and along the western 125 feet of the
11 outside (southern side) thereof. These areas
12 shall be posted against moorage.

13 We conclude that the subject substantial development permit, if so
14 conditioned, complies with the San Juan County Master Program and the
15 Shoreline Management Act.

16 V

17 Any Finding of Fact which should be deemed a Conclusion of Law is
18 hereby adopted as such.

19 From these Conclusions the Shorelines Hearings Board makes this

20 ORDER

21 This matter is remanded to respondent, San Juan County, with
22 instructions to issue a substantial development permit in the same form as

originally issued except that it shall be amended by addition of the
two conditions set forth in Conclusion of Law IV above

DATED this 17th day of December, 1979.

SHORELINES HEARINGS BOARD



CHRIS SMITH, Member



WILLIAM A. JOHNSON, Member



RODNEY KERSLAKE, Member



DELMON ANDERSON, Member

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